

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

LOUIS V. GALDIERI



Plaintiff,

v.

U.S. DEPARTMENT OF THE INTERIOR

1849 C Street NW

Washington, DC 20240

Defendant.

) Case No: _____

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COMPLAINT

1. Plaintiff Louis V. Galdieri brings this action against the United States Department of the Interior under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201, and 2202.

3. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

4. Because Defendant the U.S. Department of the Interior has failed to comply with the applicable time-limit provisions of FOIA, Louis V. Galdieri is deemed to have constructively exhausted administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i)

and is now entitled to judicial action enjoining the agency from continuing to withhold agency records and ordering the production of agency records improperly withheld.

PARTIES

5. Plaintiff Louis V. Galdieri is a writer and documentary filmmaker, primarily engaged in disseminating information to the public. He is committed to promoting transparency in government, educating the public about government activities, and ensuring the accountability of government officials. Through research and FOIA requests, Louis V. Galdieri is using the information he gathers, and his analysis of it, to educate the public about the activities and operations of the federal government through published analyses, documentary film, and social media.

6. Defendant the U.S. Department of the Interior (DOI) is a department of the executive branch of the U.S. government headquartered in Washington, DC, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). DOI has possession, custody, and control of the records that Louis V. Galdieri seeks.

STATEMENT OF FACTS

7. On December 22, 2017, the Department of the Interior's Principal Deputy Solicitor Daniel Jorjani issued a Solicitor's M-Opinion reversing his predecessor, Hillary Tompkins, and allowing for the renewal of mineral leases held by Twin Metals Minnesota, a U.S. subsidiary of Chilean mining conglomerate Antofagasta Plc, in Superior National Forest, on the edge of the Boundary Waters Canoe Area Wilderness.

8. That same afternoon, Minnesota Governor Mark Dayton issued a statement that read,

in part, “we will have to uncover why the financial interests of a large Chilean corporation, with a terrible environmental record, has trumped the need to protect Minnesota’s priceless Boundary Waters Canoe Area.” Other statements by prominent public figures, such as Representative Betty McCollum (D-MN) and Bush administration ethics official Richard Painter, asked the same question, all making it clear that the answer was of urgent public interest.

9. On January 19, 2018, Louis V. Galdieri submitted a Freedom of Information Act request to the Solicitor’s Office at DOI seeking records generally relating to the Solicitor’s M-Opinion of December 22, 2017. The request included:

1. Any communications sent and received by the Office of Deputy Solicitor Daniel Jorjani, including but not limited to any emails or letters sent and received directly by Deputy Solicitor Daniel Jorjani or on behalf of Deputy Solicitor Daniel Jorjani, regarding the Boundary Waters Canoe Area Wilderness, Antofagasta Plc, Twin Metals Minnesota, Franconia Minerals Corporation, Twin Metals Minnesota Project, Andronico Luksic-Craig, the Luksic family or any member of the Luksic family, Interior Dept. memos M-37036 and M-37049, Mineral Leases MNES-01352 and MNES-01353, or mining in Superior National Forest.
2. Any records describing, scheduling, or otherwise relating to Interior Secretary Ryan Zinke and Deputy Solicitor Jorjani’s review of Mineral Leases MNES-01352 and MNES-01353 and of M-37036, and the preparation, development, writing, revising, scheduled release date, and publication of M-37049, including earlier drafts and tracked revisions of M-37049.

3. Deputy Solicitor Daniel Jorjani's complete calendar of meetings, telephone conferences, and appointments from December 1 2016 through December 31, 2017.
 4. Any records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians and any tracking sheets used to track the processing of this request, and FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted the searches.
10. On January 23, 2018, the Department of the Interior acknowledged receiving the records request and assigned the request tracking number SOL-2018-00089.

Appeal of Fee Waiver

11. On January 24, 2018, Plaintiff appealed the Department of Interior's denial of a fee waiver on grounds that his work contributes to the understanding of a reasonably broad audience. The fee waiver request was promptly granted on January 26, 2018.

Good Faith Correspondence

12. From May 2018 through early February 2019, Plaintiff corresponded with Lance Purvis and Angela Moore of the Solicitor's FOIA Office at the Department of Interior (SOL FOIA) about this request, and Ms. Moore provided semi-regular updates on the status of the request and the search for responsive documents.

Rolling Release

13. On August 20, 2018, Ms. Moore notified Plaintiff via email that SOL FOIA had reviewed approximately 4,900 pages of responsive documents; that those documents were undergoing legal review; and, once the legal review was complete, these 4,900 pages would be forwarded “as part of a rolling release.” The status update went on to say that “documents from other attorneys that are also related to your request” were “currently” being reviewed.

First Partial Decision Letter and First Release

14. On September 21, 2018, Ms. Moore of SOL FOIA notified Plaintiff via email that legal review of the 4,900 pages had been finalized. A decision letter was issued on September 24, 2018, and a first release of approximately 4,900 pages was sent to Plaintiff on a compact disc via surface mail.

Second Partial Decision Letter and Second Release

15. After a continuation of good faith correspondence, on February 13, 2019, SOL FOIA issued a Second Partial Decision Letter. A second release of documents was sent to Plaintiff on a compact disc via surface mail. The Second Partial Decision Letter was clear that the rolling release would continue: “Additional responses are forthcoming.”

Updating of Awareness Review Policy

16. In February of 2019, according to reporting by Roll Call and other news publications, the Department of Interior at the direction of Solicitor Daniel Jorjani expanded its

Awareness Review Policy “to records relating to officials who left the department, including former Interior Secretary Ryan Zinke.”¹

Publication Followed by Abrupt Cessation and Non-Responsiveness

17. Starting with receipt of the first release in September 2018, Plaintiff began publishing blog posts discussing the released documents, along with excerpts from the released documents, on lvgaldieri.com, his personal blog. Plaintiff also published links to these blog posts and discussed the released documents on social media service Twitter.

18. On February 11, 2018, Plaintiff published the documents provided in the first release on DocumentCloud, a web-based software platform for publishing primary source documents widely used by journalists and government transparency advocates. On February 17, 2019, Plaintiff published the second release on DocumentCloud.

19. Shortly after publication of the initial two record releases, the Solicitor’s FOIA office abruptly ceased all communications with Plaintiff, failing to respond to numerous, regular emails and phone messages from Plaintiff requesting a status report on additional releases.

¹ See, e.g., “Interior Department Policy Let Political Appointees Review FOIA Requests” (<https://www.rollcall.com/news/congress/interior-department-policy-let-political-appointees-review-foia-requests>); “Interior Held Back FOIA’d Documents After Political Screenings” (<https://www.rollcall.com/news/interior-held-back-documents-after-political-screenings>); “Trump Administration Delayed Releasing Documents Related to Yellowstone Superintendent’s Firing” <https://thehill.com/policy/energy-environment/449296-exclusive-trump-administration-delayed-releasing-documents-related>

Solicitor Tracking Plaintiff on Social Media

20. Shortly after the abrupt cessation of all correspondence with Plaintiff, on March 26, 2019, a Twitter account appearing to belong to Solicitor of the Interior Daniel Jorjani (@DJPDSOL9999) – also the department’s chief FOIA officer -- began to follow Plaintiff on the social media service.

Exhaustion of Administrative Remedies

21. As of the date of this complaint, Defendant has (a) failed to notify Plaintiff of a final determination regarding Plaintiff’s FOIA request, including the scope of responsive records Defendant intends to produce or withhold as part of a rolling release and the reasons for any withholdings; or (b) produce the requested records or demonstrate that the requested records are lawfully exempt from production.

22. Through DOI’s abrupt cessation and non-responsiveness, and particularly SOL FOIA’s failure to communicate with Plaintiff its determination or provide additional records within the time period required by law, Louis V. Galdieri has constructively exhausted administrative remedies and seeks immediate judicial review.

COUNT I Violation of FOIA, 5 U.S.C. § 552 Failure to Conduct Adequate Searches for Responsive Records

23. Louis V. Galdieri repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

24. Louis V. Galdieri properly requested records within the possession, custody, and control of Defendant.

25. Defendant is an agency subject to FOIA and must therefore make reasonable efforts to search for requested records.

26. Defendant has failed to promptly review agency records for the purpose of locating those records that are responsive to Louis V. Galdieri's FOIA request.

27. Defendant's failure to conduct adequate searches for responsive records violates FOIA.

28. Plaintiff Louis V. Galdieri is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly make reasonable efforts to search for records responsive to Louis V. Galdieri's FOIA request.

COUNT II Violation of FOIA, 5 U.S.C. § 552 Wrongful Withholding of Non-Exempt Records

29. Louis V. Galdieri repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

30. Louis V. Galdieri properly requested records within the possession, custody, and control of Defendant.

31. Defendant is an agency subject to FOIA and must therefore release in response to a FOIA request any non-exempt records and provide a lawful reason for withholding any materials.

32. Defendant is wrongfully withholding non-exempt agency records requested by Louis V. Galdieri by failing to produce records responsive to Plaintiff's FOIA request.

33. Defendant is wrongfully withholding non-exempt agency records requested by Louis V. Galdieri by failing to segregate exempt information in otherwise non-exempt records responsive to Louis V. Galdieri FOIA request.

34. Defendant's failure to provide all non-exempt responsive records violates FOIA.

35. Plaintiff Louis V. Galdieri is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to Plaintiff's FOIA request and provide an index justifying the withholding of any responsive records withheld under claim of exemption.

REQUESTED RELIEF

WHEREFORE, Louis V. Galdieri respectfully requests the Court to:

(1) Order Defendant to undertake the processing of additional records relating to the Solicitor's M-Opinion of December 22, 2017 (SOL-2018-00089);

(2) Order Defendant to conduct a search or searches reasonably calculated to uncover all records responsive to Louis V. Galdieri's FOIA request;

(3) Order Defendant to produce, by such date as the Court deems appropriate, any and all non-exempt records responsive to Louis V. Galdieri's FOIA request and an index justifying the withholding of any responsive records withheld under claim of exemption;

(4) Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Louis V. Galdieri's FOIA request;

(5) Award Louis V. Galdieri attorneys' fees and other litigation costs reasonably

incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and

(6) Grant Louis V. Galdieri such other relief as the Court deems just and proper.

CERTIFICATION AND CLOSING

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Dated: July 23, 2019

Respectfully submitted,

Louis V. Galdieri

A black rectangular box redacting the signature of Louis V. Galdieri.

Pro Se